WORLD CHRONICLE

UNITED NATIONS

FOR IMMEDIATE RELEASE

DURATION: 28:00" TRANSCRIPT AS BROADCAST

PROGRAMME: **"WORLD CHRONICLE"**

GUEST: Eduardo Valencia-Ospina
Registrar, International Court of Justice

JOURNALISTS: James Bone, *The Times*, London
Khalil Matar, *Al-Sharq Al-Awsat*, London
Norberto Svarzman, Televisa-Eco, Rome

MODERATOR: Michael Littlejohns

SYNOPSIS

THE COURT

Eduardo Valencia-Ospina, Registrar of the International Court of Justice, highlights the role the World Court plays in deciding legal international law disputes submitted by Member States. The timing of any case, he says, depends on the readiness of the parties involved; and for criminal charges, Mr. Valencia-Ospina believes the International Court should have a special chamber to hear such cases.

"WORLD CHRONICLE" is produced by the Information Products Division, Department of Public Information, United Nations, New York, NY 10017, U.S.A.

Executive Producer:	Kamil Taha
Director:	Livingston Hinckley
Production Asssistant:	Sheila Poinesette
Programme No. 488	Recorded 28 October 1992

93-95138

VOICE: From United Nations Headquarters in New York, this is **WORLD CHRONICLE**, an unedited interview programme about major global issues. Here now to introduce our guest is the host of today's **WORLD CHRONICLE**.

LITTLEJOHNS: I'm Michael Littlejohns and this is **WORLD CHRONICLE**.

Many parts of the United Nations system are well known to the public: the Security Council, the General Assembly, and the work of United Nations agencies. But when the United Nations Charter was adopted at the end of World War Two, the founding fathers created another important institution, the International Court of Justice. Located in The Hague in the Netherlands, the 15-judge court is playing an increasingly important role in the development of international law.

Our guest today, Eduardo Valencia-Ospina, is the Registrar of the International Court of Justice. A national of Colombia, Mr. Valencia-Ospina will be interviewed here at United Nations Headquarters in New York by James Bone of *The Times* of London; Khalil Matar of *Al-Sharq Al-Awsat* of London; and Norberto Svarzman of Televisa-Eco.

Mr. Valencia-Ospina, welcome to **WORLD CHRONICLE**. Mr. Registrar, tell us a bit about the functions of your office: what does a registrar have to do in this important institution, the World Court?

VALENCIA-OSPINA: The Registrar is the chief administrative officer of the Court. It has also other responsibilities. He's in charge of providing the legal advice to the judges of the Court who do not have their own legal clerks, and has, as registrar, important functions in the judicial process. He participates in the

deliberations, without a vote, on the cases before the Court, and participates in the drafting of the judgements in the drafting committees of the Court. He also has representational functions, as what has brought me to New York this time.

LITTLEJOHNS: In the introduction, we mentioned there are 15 judges in the Court. How are the judges appointed or elected, and for how long, and how do they go about their duties?

VALENCIA-OSPINA: Judges are elected by simultaneous election by the Security Council and the General Assembly of the United Nations upon the nomination of national groups in the permanent court of arbitration. They are elected for nine years. There are triennial elections: every three years five judges are elected. The next elections will be next year. And they serve in a personal capacity, not as representatives of any State.

LITTLEJOHNS: And they can be re-elected?

VALENCIA-OSPINA: They can be re-elected, and we have had one case of a judge who is in his third term.

LITTLEJOHNS: How many judges constitute a quorum to make decisions?

VALENCIA-OSPINA: The quorum is nine judges.

BONE: I wanted to ask, Mr. Registrar, about the place of the Court in international law. Recently there seemed to be a conflict between the Court's role and the Security Council's role over Libya. Libya went to the Court to ask the Court to stop the Security Council imposing sanctions on it for failing to hand over two suspects in the bombing of the Pan Am 103 plane over Lockerbee.

Has the Court got the power to tell the Security Council not to do things?

VALENCIA-OSPINA: Well, I wouldn't characterize the parallel exercise of their own powers under the Charter as necessarily one that has put the two organs in conflict. And certainly, under the Charter, the Court does not have the power to pass upon the legality or illegality of Security Council decisions. Each organ has its own role to play. The Security Council is the foremost political organ. The judicial organ is the Court, the principal judicial organ of the organization. And every dispute, or every situation that may be brought before the Security Council, even though it may be predominantly political, may have legal aspects to it. And there is nothing that prevents the Council from dealing with the political aspects of a controversy, and the Court with legal aspects of the same controversy. So that, under the system of the Charter, there should not be any collision of competence; each organ has its own sphere of influence and its own role to play. And the Court has emphasized this time and again: the Court is a judicial organ, it is empowered to deal with the legal aspects of controversies, even if they are political in character, and the Security Council should deal with the political aspects of the same controversy.

BONE: But it's possible, isn't it, that the legal aspects of a dispute will intersect with the political aspects and cause a clash between those two institutions? I mean, in the present case of the "Lockerbee two", Libya argues that under the Montreal Convention on Civil Aviation it has the right to try these people and investigate these people in its own country. Now, the Security Council has demanded that it send them abroad for trial in countries with which it hasn't even got an extradition treaty. Surely there's a conflict there. If the Court makes a legal decision, it's going

to affect the political judgement that the Security Council has now already made.

VALENCIA-OSPINA: Well, I couldn't go beyond what I have said for the simple reason that the case is still *sub judice* and is a case that remains on the docket of the Court. We should not forget that the Court has pronounced itself only on an interim request for provisional measures and has not dealt with the merits of the matter; the merits are still before the Court. So I could not engage in speculation as to what the relationship would be with the various conventions on which Libya has based its case. But it should be made clear that the Court has exercised its powers in deciding that at this stage the Security Council acted properly. The Court did not accept as automatically binding the determination by the Council itself; the Court looked at it within the sphere of its own functions and came to the conclusion that the Security Council had acted in this instance appropriately.

MATAR: Sir, the other side of this coin is that there are some political implications of the decisions, as to how fast or what type of decisions are made by the Court. We mentioned some cases that have been there for tens of years, and some other cases, like the Libyan case, that have been solved within a matter of days or weeks. What are the real political implications or aspects of the Court's decisions?

VALENCIA-OSPINA: Well, if by that you mean the political effect of the timing, and the length of time that the Court takes in producing a judgement or giving an opinion, the question of timing is one that is very much dependent upon the will of the parties to a particular case. The parties, when they come to the International Court of Justice, come to the highest court from which there's no appeal. The interests at stake are very important indeed -- their sovereign

rights. And parties want to take every possible measure to protect those interests, and in many cases those measures imply a considerable amount of time for the parties themselves to prepare their case. We have recently given judgement in a controversy that goes back centuries between El Salvador and Honduras. This case took a number of years to be decided, but this length of time was, to the greatest extent, attributable to the desire of the parties to allow themselves very ample time to submit written pleadings; so that, in effect, one should not consider that the Court delays proceedings, for whatever purpose. In fact, the Court has given ample proof of its flexibility and its capacity to react promptly to urgent demands of the international community. I could cite here requests for an advice or opinion on the status of the PLO office in New York, which was a matter that was resolved in a question of a few weeks, so that I would not necessarily attribute any special meaning to the length of time that a case takes before the Court.

The larger question: the Court is not sitting in an ivory tower, they are in The Hague. The Court applies international law, deals with legal disputes, as I mentioned before, deals with legal components of political disputes, and is very much aware of the political background in which these disputes arise. After all, these are inter-State disputes. And the Court is also aware of this background in terms also of the viability of its judgements and the effectiveness of the solutions arrived at. It's not to say that the Court is judging on an equitable basis, no. But the Court is an organ of the United Nations, this is a political organization, and we draw the necessary consequences from that.

SVARZMAN: Mr. Registrar, you mentioned a while ago that sometimes the countries want to delay the thing to protect their sovereign rights. But the fact is that now, as has been said here in the General Assembly by several Latin American countries, the new

dynamic in the Security Council sometimes goes over the sovereign rights. Is that not a conflict in the position of protecting sovereign rights in the Court and the attitude of the Security Council? And how will the Court face this new reality?

VALENCIA-OSPINA: Well, clearly, matters that come before the Security Council are characterized by a sense of great urgency. And, inevitably, procedures before the Court tend to be more elaborate and lengthy. But, as I said, given the example of the PLO request for advisory opinion, the Court has proven that it can adjust, and can give an answer with the necessary degree of urgency. The matter is one, in the end, for the Security Council itself to decide. If the Security Council considers that legal aspects of the controversies submitted to it should be referred beforehand to the International Court of Justice, it could do so by means of a request for an advisory opinion on those aspects. But perhaps the urgency of the matter before the Council would not allow for the Council to do so. We cannot act *propria motu*, we have to be seized, either by States in a contentious case, or by a request from an authorized organ for an opinion.

LITTLEJOHNS: The programme is **WORLD CHRONICLE**, our guest is Eduardo Valencia-Ospina, Registrar of the International Court of Justice.

Mr. Valencia-Ospina, you have used the term "advisory opinion". Is that something different from a judgement?

VALENCIA-OSPINA: Yes, indeed. The Court's jurisdiction is both contentious and advisory. We are open only to States, and States can bring their disputes to the Court -- this would be the exercise of the contentious jurisdiction of the Court. And in fact, in the present docket, where we count 10 cases, an almost all-time record,

all of the cases are contentious. But in addition, organs of the United Nations, like the General Assembly or the Security Council, and others that may be so authorized by the General Assembly, can request opinions from the Court, and the Court will give an opinion, the main difference between an opinion and a judgement being that the opinion is not binding.

Now, this clear-cut distinction has become blurred as a result of the introduction, in a number of conventions that provide for the possibility of a request for advisory opinion, of the notion of "binding advisory opinions". So States parties to those conventions agree in advance to be bound by that opinion, but the procedure is a different one. Basically, the distinction arises from the fact that under the international law prevailing at the time the statute of the Court was adopted, international organizations were not regarded as having the same status in international law as States. I think this is an idea that perhaps could be reviewed after almost 50 years of life. We have had several cases in which the international Organization has appeared before the Court and where the international Organization could have defended its interests in a contentious procedure, but, until now, this is the difference.

BONE: The International Court of Justice is sometimes referred to as the World Court, but it seems to me there's a gaping hole in its jurisdiction, which is the question of criminal cases. In the case of the two Lockerbee suspects who are in Libya, Libya has offered to turn them over to a United Nations court, a neutral court, and that kind of court just doesn't exist in the world now. There's no court to try individuals on charges of committing international crimes. We have a situation where terrible war crimes are being committed in former Yugoslavia; there's no international court to try these people. Now, I know there's a proposal from the

International Law Commission to set up some kind of stand-by court that could try people, individuals, not States, for crimes under international conventions. I wonder whether you think that's the right approach, or whether that jurisdiction, the criminal jurisdiction, ought to be given to the World Court instead?

VALENCIA-OSPINA: The two alternatives have been considered. This is a subject that has been very much discussed ever since Nuremburg and Tokyo. On the one hand, it has been argued that the International Court should have a chamber of criminal procedure; on the other hand, it has been proposed that a separate court be established, and that is the current proposal before the General Assembly. Under the statute as presently drafted, the Court is not empowered to deal with cases other than the ones I have mentioned before, cases between States or requests from international organizations. Individuals do not have access to the Court, at least not directly; they may have access through diplomatic protection by their own States.

But, in principle, nothing prevents the present World Court from dealing with criminal matters, international criminal matters, if the statute is changed to the extent that this additional jurisdiction would be granted to it. Perhaps the question is debatable, and there might be merit in having an independent court established to deal with these questions. But it is a political decision to be taken by the General Assembly.

MATAR: Sir, going back to the issue of the decisions being binding, and that States only have to present their cases to the World Court: first of all, there are cases that are presented by one State and cases presented by two States to the party. What are the distinctions that are made right there? And second, with that, if a decision is made by the Court -- and you said it is binding -- how

can you implement it? There are many cases in which the Court has made decisions, and the decisions were not implemented.

VALENCIA-OSPINA: On the first question, there are several ways in which a State can bring a case before the Court. But they all imply a fundamental aspect, and that is the consensual aspect of the jurisdiction. The Court cannot take up a case unless the States parties to the dispute have agreed to submit to the jurisdiction of the Court. I will go into that. And how is this consent to be given? You can give this consent by agreement of both parties for the specific purposes of one case by means of a special agreement, or *compromis*. This consent may have been given in advance in *compromissory* clauses that are inserted in treaties, either bilateral or multilateral, so that if a problem arises concerning the interpretation of the application of such a treaty, the parties have already agreed to go to the Court in advance. And there is finally the so-called "optional clause", whereby States accept the compulsory jurisdiction of the Court, in advance, in controversies with other States that will have accepted the same obligation. So that the agreement of both parties is necessary, but it may have been expressed in one of these three different ways.

Your second question has to do with the implementation of the judgements of the Court. And I think here I should explain that, like courts in national, municipal systems of law, the Court has not been vested with a police power. If you take the Supreme Court of any Member State where there is a division of powers between legislative, executive and judiciary, it is up to all the branches of government to implement the decisions of the courts. You may have sheriffs, you may have bailiffs, but in the final analysis, it is up to the executive branch to implement decisions of courts. The same happens in the international sphere. The Security Council could be regarded as the executive branch in the United

Nations system, and the Security Council has been given the power to enforce decisions of the Court.

But I think there is a grave misconception regarding the known applicability or the known implementation of judgements of the Court. If one examines, statistically, the judgements and opinions that the Court has given since it was established, one comes to the conclusion that those cases that could be said were cases where a judgement of the Court was not implemented are very limited indeed, are very few in number, probably almost nonexistent nowadays. The obvious example that is given has been the non-implementation by Albania of the Corfu Channel decision by the Court; and I could say today, with some satisfaction, that forty-some years later, Albania has satisfied its obligations under that judgement. The United Kingdom, the other party, has declared itself satisfied. And I could analyse many other such examples in a similar vein.

SVARZMAN: A quick question of great interest for Latin America, especially for other areas also. How can an individual in a country where there are gross violations of human rights appeal to the Court, because the system seems now to be very closed in those very serious situations, no?

VALENCIA-OSPINA: Well, the area of human rights has developed a great deal, and there are a number of international institutions, including courts, to which recourse may be had by individuals for violations of human rights. In the Latin American context there is the Inter-American Court on Human Rights; there are such courts in Europe, in other regions; and there are organs of the United Nations -- the Commission on Human Rights, the Human Rights Committee, a number of others -- to which these grievances can be brought. So that I would not necessarily agree that the individual has been left

without recourse, whereas the State has access to our court. The question is that our Court has not been empowered to deal with these matters. There are other courts that can do so.

LITTLEJOHNS: Mr. Valencia-Ospina, can people attend the hearings at the Court? If someone's visiting The Hague from the United States, for example, can they just drop in?

VALENCIA-OSPINA: Yes, the hearings are public, as are the readings of judgements or opinions. The deliberation is private, and in fact most of the work of the Court is done in private. But hearings are public, and I would hope that more people come to the hearings when they are at The Hague.

LITTLEJOHNS: Mr. Valencia-Ospina, that's all the time we have. Thank you for joining us on this edition of **WORLD CHRONICLE**.

Our guest has been Eduardo Valencia-Ospina, Registrar of the International Court of Justice. He was interviewed here at United Nations Headquarters in New York by James Bone of *The Times* of London, Khalil Matar of *Al-Sharq Al-Awsat* of London, and Norberto Svarzman of Televisa-Eco.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of **WORLD CHRONICLE**.

****

Transcripts of the programme may be obtained free of charge by sending a stamped, self-addressed envelope to: **WORLD CHRONICLE**, United Nations, Room S-827, New York, NY 10017, USA.

WORLD CHRONICLE is broadcast worldwide, and features guests whose work is concerned with major global issues. This programme is a public affairs presentation of this station from United Nations Radio and Television.

Additional information material about the United Nations can be obtained by writing to the Public Inquiries Unit, United Nations, Room GA-57, New York, N.Y. 10017, USA, or the UN Information Centre in your country.